

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DANIEL LEE CASHER,)
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PLAINTIFF,)
)
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v.) CASE NO. 1:04-cv-1105-MEF
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) WO
NCO FINANCIAL SYSTEMS, INC., *et al.*,)
)
)
DEFENDANTS.)

ORDER

This cause is before the Court on two motions: the Second Motion to Amend Complaint (Doc. # 25) filed on June 13, 2005 and the Motion for Additional Time to Perfect Service (Doc. # 24) filed on June 10, 2005.

Federal Rule of Civil Procedure 4(m) requires Plaintiff to cause service to be made upon the defendants to this action within 120 days after the filing of the Complaint. The Complaint was filed on November 16, 2004. NCO Financial Systems, Inc., the sole defendant named in the original Complaint was served shortly thereafter at an address in Pennsylvania.

Pursuant to this Court's January 18, 2005 Uniform Scheduling Order, the deadline for amending pleadings and adding parties in this case was April 1, 2005. On March 24, 2005, Plaintiff sought leave to amend the Complaint to add two defendants "Ema Miller" and "Roger Miller" and to more specifically plead a count in the Complaint. On April 19, 2005, the Court granted leave to amend the Complaint and the Amended Complaint was filed

shortly thereafter. On May 5, 2005, Plaintiff caused summons to issue to Ema and Roger Miller. The summonses was addressed to Ema and Roger Miller at their alleged place of employment, NCO Financial Systems, Inc. in Pennsylvania. The summonses appear to have been mailed by certified mail rather than served by a process server. Not surprisingly, this attempt at service failed.

This Court entered an Order on June 2, 2005, calling the failure of service to the attention of Plaintiff's counsel. In response, Plaintiff's counsel filed a Motion for Additional Time to Perfect Service (Doc. # 24). Shortly thereafter, Plaintiff's counsel filed the Second Motion to Amend Complaint (Doc. # 25). In this motion, Plaintiff indicates that since filing the Amended Complaint, he has learned that Roger Miller is also known as Kevin Baize and that Ema Miller is also known as Yma Miller. Plaintiff seeks leave to amend the complaint to correctly identify Roger and Ema Miller.

It is hereby ORDERED as follows:

- (1) The Second Motion to Amend Complaint (Doc. # 25) is GRANTED and Plaintiff is DIRECTED to file the Second Amended Complaint by no later than **June 17, 2005**
- (2) The Motion for Additional Time to Perfect Service (Doc. # 24) is GRANTED and Plaintiff is ORDERED to perfect service on Ema Miller a/k/a Yma Miller and Roger Miller a/k/a Kevin Baize, by no later than **August 31, 2005**.

DONE this the 13th day of June, 2005.

/s/ Mark E. Fuller
CHIEF UNITED STATES DISTRICT JUDGE